HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

Writ Petition No.12405 of 1995

Between:

The Forest Range Officer
Rapur Range, Rachur, Nellore District

... Petitioner

And:

Pulikallu Krishnaiah and another

... Respondents

Counsel for the petitioners : Government Pleader for Forests

Counsel for Respondents : None

Date: 14.09.2006

ORDER: (Per G.V. Seethapathy,J)

Per G.V.Seethapathy, J.

This is a petition for quashing order dated 13.4.1995 passed by District Judge, Nellore in Forest Appeal No.5 of 1993.

The Facts:

On receipt of some information on 12.4.1993 about the smuggling of red sanders from Venkatagiri, Rapur, Veligonda forest areas through lorries, the Forest Range Officer (petitioner herein) along with his staff tried to intercept the lorry bearing No.AEP 5567 belonging to the first respondent herein at Venkateswarapuram commercial check post near Penna river, but the lorry did not stop and fled away. After long chase, the lorry was intercepted in the outskirts of Musunoor-Kavali village. However, the driver and cleaner jumped out and ran away. The petitioner and his staff took the lorry to the Forest Range Office, Kavali and conducted a panchanama in the presence of panchayatdars. The lorry contained one layer of salt bags and beneath them 170 red sander logs weighing 5032 Kgs valued at about Rs.5 lakhs were found concealed. The lorry, the red sanders and salt bags were seized on 12.04.1993 and produced before the Divisional Forest Officer-cum-Authorised Officer (hereinafter referred to as 'Authorised Officer') on 14.4.1993. The Authorised Officer initiated proceedings under Section 64 of the Andhra Pradesh Forest Act, 1967 (for short, 'the Act') for confiscation. He issued notice in the local daily newspaper on 06.05.1993 and fixed the date of enquiry as 23.05.1993. In the meanwhile, the first respondent-owner of the lorry and the driver by name

K. Narasimhulu appeared before the Authorised Officer through Advocate and filed a petition on 14.05.1993 seeking release of the

lorry. His request was turned down. During the enquiry conducted by the Authorised Officer, the first respondent stated that he had no knowledge about committing of the offence of smuggling of red sander logs. The driver stated that he took the lorry to Gopalapuram for loading of salt bags and he went aside to have a cup of tea and by the time he returned one hour later, the lorry was fully loaded and tarpaulin was also laid and that he had no knowledge about the material that was loaded into the lorry. On conclusion of the enquiry, the Authorised Officer passed order dated 27.7.1993 whereby he confiscated the lorry along with salt bags and red sanders. The appeal preferred by the first respondent against the order of confiscation was allowed by the District Judge observing that the owner of the lorry had no knowledge of the commission of the offence and, therefore, the Authorised Officer was not justified in confiscating the lorry and the goods. Accordingly, the learned District Judge directed release of the lorry.

Feeling dissatisfied with the order of the learned District Judge, the petitioner has filed this petition.

In the affidavit filed by Sri Peddi Raju, Forest Range Officer, Rapur Range, Nellore District, it has been averred that order of confiscation passed by the Authorised Officer was in accordance with Section 44 of the Act and the District Judge committed a serious illegality by ordering release of the lorry on the ground that

the owner did not know about the loading of red sanders. He further averred that even though the witnesses produced on behalf of the department were available for cross-examination by respondent No.1 and his driver, either of them availed the opportunity and, therefore, the finding recorded by the Authorised Officer that there was violation of Section 44 of the Act did not call for interference by the District Judge.

The learned single Judge, before whom the writ petition was

initially posted referred the matter to the Larger Bench by observing that the decision of a Division Bench in 'Forest Range Officer, Madanapalle v. Pritham Singh and another' reported in 1990 (1) ALT 156 (DB), requires reconsideration. This is the reason why the case has been listed before the Division Bench.

Heard learned counsel for the parties and perused the record. Section 44(2)(c) of the Act came up for consideration before a Full Bench of this Court in 'Sub-Divisional Forest Officer, Chennur v. Vijay B. Gulati and others' reported in 1997 (6) ALT 238 (FB). The Full Bench approved the decision of the Division Bench in 'Forest Range Officer, Madanapalle v. Pritham Singh' reported in 1990 (1) ALT 156 (DB). On the scope of the liability of the owner of the vehicle, the Full Bench held as under:

> "… Confiscation of a vehicle which is used for unlawful purposes in normal course can be ordered only if the owner connived or had the knowledge of the unlawful use of the vehicle or that his agent did only such things as the owner desired and thus agent's culpability was shared by the owner and in the case of the servant namely the driver in particular only when it is shown that he was carrying out the desires of the owners".

In the light of the above enunciation of law, the question which needs determination is whether the first respondent was having knowledge or he connived in the commission of the offence and, therefore, the order of confiscation passed by the Authorised Officer is valid?

The factum of transportation of 170 logs of red sanders concealed under the salt bags in the lorry AEP 5567 belonging to the first respondent and interception of the said lorry by the forest officials on the National High-way near Musunoor is not in dispute. The record of enquiry conducted by the Authorised Officer shows that on 12.4.1993 at about 9 A.M. on prior information about the smuggling of

red sanders, the lorry was sought to be intercepted by the forest officials near Venkateswarapuram check post on the banks of river Penna, but the lorry did not stop and fled away and only after long chase, it was finally intercepted at Musunoor village near Kavali. However, as mentioned above, the driver and the cleaner ran away and the lorry along with contraband was taken to the Forest Range Office, Kavali which was 8 or 9 KMs away and a panchanama was conducted and the lorry as well as the contraband were seized. The first respondent-owner of the lorry did not immediately appear before the Forest Range Officer. It was only after publication was made in local newspaper on 6.5.1993 notifying the date of enquiry as 23.5.1993, the owner of the lorry

appeared before the Authorised Officer on 14.5.1993 through Advocate and sought release of the vehicle, which request was rejected. If the first respondent-owner of the lorry had no knowledge of the offence being committed, there was absolutely no reason as to why he did not approach the Authorised Officer seeking release of the lorry immediately after its seizure. Not only this, the only plea put-forward by the first respondent before the Authorised Officer was that he instructed the driver not to allow any smuggling activities to be conducted through the lorry. In our opinion, the stand taken by the first respondent before the Authorised Officer was wholly untenable. It was nothing but a ploy to wriggle out of the responsibility as the owner of the vehicle. Mere giving out instructions to the driver not to permit smuggling activities in the lorry is not sufficient to absolve the owner of the lorry for any consequences that may follow, because no owner of a lorry can be expected to go on record that he gave any instructions to the contra. It is not the case of the first respondent that without his knowledge or permission, the driver allowed the transportation of the

red sanders. It is also not his case that there was some other agent acting on his behalf and that such agent acted mala fide without his knowledge. In the enquiry before the Authorised Officer, the first respondent did not disclose the name of the person, who has engaged the lorry for transporting the salt bags from Muttukur to Hyderabad. Even the driver of the lorry did not reveal the identity of the person who engaged the lorry for transporting the salt bags. There is nothing on record to show that

the lorry was engaged by any one for transporting salt bags from Muttukur to Hyderabad. The explanation of the driver offered during the enquiry before the Authorised Officer that he went aside to have a cup of tea and by the time he returned an hour later, the loading was over and tarpaulin cover was also laid and so, he did not know what contents were loaded, is unbelievable. Therefore, the Authorised Officer did not commit any error by discarding the defence set up by the driver of the lorry. The learned District Judge, without assigning cogent reasons, gave credence to the version of the driver and ordered release of the vehicle by observing that the owner did not have knowledge about the smuggling of red sanders. It is beyond one's comprehension that such a heavy load of 170 logs of red sanders weighing more than 5000 Kgs could be loaded into the lorry within a short span of one hour and the driver had no occasion to notice such an enormous and time consuming loading activity. If really the driver had no knowledge of loading of red sanders and that he was under the bona fide impression that only salt bags were being transported in the lorry, there is absolutely no explanation as to why he did not stop the lorry when signaled to do so by the Authorised Officer at Venkateswarapuram check post and fled away and did not choose to stop the lorry until it was intercepted on the National High way near

Musunoor after a long case. Again there is no explanation as to why the driver chose to run away from the spot after the interception of the lorry. The driver did not dispute the factum of his driving the lorry and also driving the lorry at the time of interception in the manner alleged,

during the enquiry before the Authorised Officer. The knowledge of the driver about the commission of the offence and his connivance therein cannot be doubted at all. The observation of the learned District Judge in the impugned judgment that "it is only with the confidence and belief that the lorry will be loaded with salt bags, the driver went for a while to have a cup of tea and his bonafides cannot be doubted", is perverse. The seizure of the vehicle by way of panchanama at the Forest Range Office, Kavali, which is 8 or 9 KMs away from the spot of interception, is also not disputed by the owner or the driver during the enquiry. However, the learned District Judge in the impugned judgment held that "it appears that the lorry was brought to Dachuru Forest Range Office, which is away of 400 KMs and there they called the mediators and panchanama was conducted. So, it is crystal clear that no mediators were present at the time when the lorry was seized by the Forest Officers". These observations are factually incorrect. It is not known wherefrom the learned District Judge could infer that the lorry was taken to Dachur for panchanama and that it was 400 KMs away. The record of enquiry before the Authorised Officer shows that as the driver and cleaner ran away from the spot of interception, the forest officials took the lorry to the nearby Forest Range Office, at Kavali, which was 8 KMs away, where the panchanama for seizure of vehicle and contraband was conducted.

On the basis of the above discussion, we hold that the impugned order suffers from the vice of surmises and conjectures

and is vitiated by an error of law apparent on the face of the record.

We are further of the view that the failure of the first respondent – owner of the lorry and his driver to disclose the identity of the persons at whose instance the salt bags or red sanders were loaded into the lorry is itself sufficient to establish lack of bona fides on their part and to impute knowledge as to the nature of the goods that were being transported in the lorry. Added to this, the conduct of the first respondent in not approaching the Forest Range Officer for release of the lorry immediately after the seizure does not fit in with his plea of innocence. The unbelievable and unacceptable story of the driver that the lorry was loaded with the material while he went aside for a cup of tea, coupled with the fact that he did not stop the vehicle on being signaled and that he could be intercepted only after long chase, again points to the guilt of the driver, as well as the owner, inasmuch as, it is not the case of the first respondent-owner that without his knowledge or permission, the driver has unauthorisedly permitted transporting of red sanders. There cannot be any direct evidence to prove the existence or otherwise of knowledge of any factum by a person. The same has to be necessarily inferred from the attending circumstances coupled with the conduct of the parties besides the evidence available on record and in the facts and circumstances of the present case, knowledge

of transportation of red sanders in the lorry is clearly attributable to the owner of the lorry-first respondent. Therefore, confiscation of the vehicle along with the red sanders is perfectly valid.

In the result, the writ petition is allowed. Order dated 13.4.1995 passed by District Judge, Nellore in Forest Appeal No.5 of 1993 is quashed and the one dated 27.7.1993 passed by the Authorised Officer for confiscation of the lorry AEP-5567 belonging to

the first respondent along with the goods is restored. However, the parties are left to bear their own costs.

G.V.SEETHAPATHY, J.

G.S.SINGHVI, C.J.

14.09.2006.

BSS